

K333SCHF - REDACTED

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

S2 17 Cr. 548 (PAC)

5 JOSHUA ADAM SCHULTE,

6 Defendant.

Trial

7 -----x
8 New York, N.Y.
March 3, 2020
10:00 a.m.

9 Before:

10 HON. PAUL A. CROTTY,

District Judge
-and a jury-

11 APPEARANCES

12 GEOFFREY S. BERMAN

13 United States Attorney for the
Southern District of New York

14 BY: MATTHEW J. LAROCHE

SIDHARDHA KAMARAJU

15 DAVID W. DENTON JR.

Assistant United States Attorneys

16 SABRINA P. SHROFF

17 Attorney for Defendant
-and-

18 DAVID E. PATTON

Federal Defenders of New York, Inc.

19 BY: EDWARD S. ZAS

Assistant Federal Defender

20
21 Also Present: Colleen Geier

Morgan Hurst, Paralegal Specialists

22 Achal Fernando-Peirís, Paralegal

John Lee, Litigation Support

23 Daniel Hartenstine CISO, Department of Justice

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Deliberations

1 (Trial resumed; a note was received from the jury)

2 THE COURT: We have a note from the jury, and we have
3 copies for you, and we'll show you the note in just a moment.
4 The note reads: "Can we please have a summary list of the
5 exhibits? Especially the ones used during the arguments/trial.
6 Thank you."

7 I'm giving the original to Mr. Gonzalez. Please show
8 both parties the original.

9 (Pause)

10 (At 10:15 a.m. a note was received from the jury)

11 MS. SHROFF: Good morning.

12 THE COURT: Good morning. We have a note from the
13 jury.

14 MS. SHROFF: Okay. Sorry, I was late.

15 THE COURT: That's all right. I think the note's on
16 your desk there.

17 MS. SHROFF: Sorry?

18 THE COURT: The note's there.

19 MS. SHROFF: Okay.

20 (Defendant present)

21 THE COURT: We have a second note from the jury,
22 received just minutes ago. The message is: "Can we please
23 have the transcript from David's testimony, particularly around
24 Exhibit 1209-8."

25 I've given copies of the note to both parties and show

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1 them the original as well.

2 Any comments or suggestions on the second note? "Can
3 we please have the transcript of David's testimony, especially
4 around Exhibit 1209-8."

5 MR. LAROCHE: We're going over it now, your Honor.

6 THE COURT: And the first request?

7 MR. LAROCHE: Your Honor, on the first request we
8 propose giving them an exhibit list, and noting on that list
9 what exhibits were published during trial.

10 THE COURT: All right.

11 MS. SHROFF: I'm sorry. I missed that. What was the
12 proposal?

13 MR. LAROCHE: We propose giving them an exhibit list,
14 and noting on the exhibit list what was published during trial.

15 MS. SHROFF: How are you going to note that?

16 MR. LAROCHE: We've kept track, your Honor.

17 MS. SHROFF: No, no, I mean, I know. We all kept
18 track of them. My question is how you're going to note that
19 for the jury?

20 MR. LAROCHE: We'll simply create a column on the
21 exhibit list for "published."

22 THE COURT: Does "published" mean received in
23 evidence?

24 MR. LAROCHE: It means actually put on the screen,
25 your Honor.

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1 THE COURT: That means received in evidence, doesn't
2 it?

3 MS. SHROFF: We would object to that.

4 MR. LAROCHE: We would propose giving them a list of
5 all exhibits entered into evidence, and then having a column so
6 they know what was actually put on a screen so they can see.
7 It seems to be responsive for what they are asking for, which
8 is things that were discussed during argument or trial.

9 MS. SHROFF: That's not what they are asking for.

10 THE COURT: What are they asking for, Ms. Shroff?

11 MS. SHROFF: They're asked for using during
12 argument/trial. Not published, not shown. Just used.

13 What the government is trying to do is trying to
14 highlight its slide show. It's trying to highlight the Leedom
15 deck of the slide show.

16 THE COURT: How does a list of exhibits --

17 MS. SHROFF: The list of exhibits I don't mind. What
18 was entered into evidence is fine, and they have a very
19 detailed list so if they have a further followup question.

20 THE COURT: Is it in numerical order?

21 MR. LAROCHE: Yes, your Honor.

22 THE COURT: What's the problem with that?

23 MS. SHROFF: That's fine. I just don't want in any
24 way indicate which slides were actually shown on the TV screen,
25 because I think what the government is trying to do is

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1 highlight the Leedom deck.

2 THE COURT: I don't think the government is trying to
3 do anything. I think the government is trying to respond to
4 the question from the jury. The question, if the jury can be
5 satisfied by a list of exhibits in numerical order with an
6 indication of what was used in court.

7 MS. SHROFF: We have no objection to that.

8 THE COURT: All right. Then that's what we'll do.

9 With regard to David's testimony, particularly Exhibit
10 1209-8, you're digging that out?

11 MS. SHROFF: Can I just have one second?

12 THE COURT: Yes.

13 MS. SHROFF: Your Honor, I just want to make sure that
14 the jury is getting on the exhibit list all the exhibits that
15 were introduced at trial. That's the proposal. Not the
16 proposal the government is making, which is to just give them
17 the exhibits or highlight for the jury the exhibits that they
18 actually published on the screen. The defense reads the note
19 as saying all of the exhibits used during trial, which is what
20 the note says.

21 THE COURT: I view "used during trial" as received in
22 evidence.

23 MS. SHROFF: That's what we are saying, yes.

24 THE COURT: Mr. Laroche?

25 MR. LAROCHE: That's fine, your Honor.

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1 THE COURT: Okay. Do you have an example of the
2 exhibit list?

3 MR. KAMARAJU: We're printing one up right now, your
4 Honor.

5 THE COURT: Okay.

6 (Pause)

7 MR. LAROCHE: Your Honor?

8 THE COURT: Yes, Mr. Laroche.

9 MR. LAROCHE: I believe the parties agree that there
10 was no 1209-8 that was discussed. There was, however, a 1202-8
11 that was discussed during his testimony.

12 THE COURT: Okay. Is that right, Ms. Shroff?

13 MS. SHROFF: I don't see any discussion in the trial
14 transcript of what, as I mentioned to the government, of
15 1209-8.

16 THE COURT: We can ask them.

17 MS. SHROFF: I think we should just reply -- actually,
18 may I just point out, your Honor, that on the note itself,
19 there is a spill.

20 THE COURT: There's what?

21 MS. SHROFF: A spill.

22 THE COURT: A spill?

23 MS. SHROFF: Yes. The person's full name is written.
24 I don't know how they have it.

25 THE COURT: As I recall it, when he was sworn in, he

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1 was asked what his name was and he said his name.

2 MS. SHROFF: That witness did not testify about
3 1209-8. That's the response to the note.

4 THE COURT: Okay. Should we say there is a 1202 --

5 MS. SHROFF: No. We're not in the business of
6 guessing what a jury wants.

7 MR. LAROCHE: I mean, they are asking for a transcript
8 of his testimony. It's clear that they are talking about
9 1202-8. That's what they want.

10 MS. SHROFF: They'll send a note back.

11 MR. LAROCHE: But to tell them he just simply didn't
12 testify about that might give them the misimpression that
13 they're just wrong about him testifying about an exhibit that
14 they clearly are interested in.

15 THE COURT: They want the transcript from David's
16 testimony. That's what they want.

17 MR. LAROCHE: We have no objection of giving it to
18 them.

19 MS. SHROFF: We have no objection to giving them the
20 entire testimony. Right?

21 MR. ZAS: I would propose just saying we couldn't find
22 a reference in his testimony to 1209-8, and let them either
23 come back and say we misspoke, we wanted this, or they can ask
24 for the whole testimony.

25 THE COURT: It's not a guessing game. We want to be

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1 helpful to the jury. They asked a question. Part of the
2 question can be answered by giving them a copy of the
3 transcript, which --

4 MS. SHROFF: Well --

5 THE COURT: -- will contain the correct exhibit
6 number. Then they can ask for that. They have the exhibit in
7 the jury room anyway, don't they?

8 MR. KAMARAJU: Yes, your Honor.

9 THE COURT: So why don't we just give them the
10 transcript.

11 MR. ZAS: That would be both direct and cross and
12 redirect?

13 THE COURT: Yes.

14 MR. ZAS: No objection.

15 THE COURT: All right. Mr. Laroche?

16 MR. LAROCHE: Yes, your Honor.

17 THE COURT: Okay. With regard to the first note, the
18 summary list of the exhibits.

19 MR. LAROCHE: Yes, your Honor. We are preparing that
20 now. We'll prepare the transcript as well.

21 THE COURT: All right. Should we call the jury in and
22 tell them that?

23 MR. LAROCHE: Your Honor, just so the record is clear,
24 we plan to take out the objections on the transcript.

25 THE COURT: Yes.

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1 MS. SHROFF: Only ones that were sustained, right?

2 THE COURT: Only the ones that were sustained.

3 (Jury present. Time noted 10:28 a.m.)

4 THE COURT: We have your notes, the note that came in
5 at 9:50, "Can we please have a summary list of the exhibits."
6 We're preparing that list of the exhibits now and we'll give
7 that to you. It make take -- how long do you think it will
8 take?

9 MR. LAROCHE: 10 minutes, 15 minutes, your Honor.

10 THE COURT: Okay. Ms. Shroff, do you want to say
11 something?

12 MS. SHROFF: No, it's okay.

13 THE COURT: So we'll have that list for you shortly.
14 And the second note, which came in at 10:10, "Can we please
15 have the transcript from David's testimony." We're preparing
16 the transcript as well. We'll send that in as soon as it's
17 available.

18 You can resume your deliberations now. Thank you.

19 (Jury resumes deliberations. Time noted 10:30 a.m.)

20 THE COURT: The other alternative is every day there
21 is a daily summary in the transcript of the exhibits discussed
22 during the trial. So, but a numerical listing is satisfactory
23 as well. I'd like to see that before it's submitted to the
24 jury.

25 MR. LAROCHE: Yes, your Honor.

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1 THE COURT: The transcript is direct, cross, redirect?

2 MR. LAROCHE: Yes, your Honor.

3 THE COURT: As Ms. Shroff points out, there is no
4 recross.

5 MS. SHROFF: You wouldn't let me, your Honor.

6 THE COURT: I know. I'm old fashioned I guess. Okay.
7 Thank you.

8 MR. LAROCHE: Thank you, your Honor.

9 (Recess pending verdict)

10 (At 1 p.m., a note was received from the jury)

11 THE COURT: We have notes from the jury which we've
12 given to the parties. It comes on two sheets of paper. I
13 think it is one note, because it asks questions 1 through 5 on
14 the first sheet, and 6 and 7 on the second sheet.

15 "Message: What is included in Count Three? We aren't
16 sure what the purview is -- articles, search warrants, tweets?
17 (2) In 2015, when DevLAN went down, was Schulte called to fix
18 the problem? How did he fix it? (3) Can you please reread
19 what was found on Schulte's home computer? (4) Did GX 809
20 reference Schulte's taking a drug ("took my last piece")? If
21 so, what was it? Was it regular use? (5) Is it confirmed that
22 Schulte's been diagnosed with Aspergers Syndrome? (6) For
23 Count One, is Altabackups inclusive of Brutal Kangaroo? Is it
24 inclusive of OSB libraries? (7) Where were OSB libraries
25 housed/where did they live?"

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1 We got these notes, the first one at 1 p.m. and the
2 second one at 1:04 p.m.

3 I'll call on the government first. Mr. Laroche?

4 MR. LAROCHE: Your Honor, I think just starting with
5 number three, "Can you please reread what was found on
6 Schulte's home computers." There is a stipulation to this
7 effect that talks about the exhibits that came from his home
8 computers. I think we could read that to them or refer them to
9 that exhibit. There was also testimony about what was found on
10 his home computer from two people, Mr. Berger and Mr. Evanchec.

11 I think several of these, your Honor, I think there is
12 nothing to give them. I think it asks their reliance on the
13 evidence. For example, number two, "When DevLAN went down, was
14 Schulte called to fix the problem." I don't believe there was
15 anything in the record related to that, other than an e-mail.
16 But I don't think that addresses that specific question.

17 THE COURT: Ms. Shroff, do you want to speak?

18 MS. SHROFF: I think there is testimony about that.
19 That he was at a conference and was called in to fix the system
20 because he was the only person who could fix the system, is
21 what I understand. And I think also, about the Aspergers,
22 there was also testimony that Bonnie thought he had Aspergers.

23 THE COURT: No. I recall the testimony. You asked
24 whether the failure to have eye contact was because he had
25 Aspergers Syndrome, and the person on the stand, it's in the

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1 record, and you can answer that question. The person said no.
2 So it was a pretty good example of --

3 MS. SHROFF: Could I just have a minute.

4 THE COURT: -- the questions not being evidence. Yes.

5 MS. SHROFF: Could I just have a minute to pull up the
6 question.

7 THE COURT: Sure.

8 MS. SHROFF: Okay.

9 (Pause)

10 MR. ZAS: Your Honor, the only thing I'm finding now
11 is a transcript page 1777, 1777, this is the witness Bonnie on
12 cross-examination. Starting on line 24. The question is:
13 "Q. Let's fast forward a little bit and ask you this. Did
14 there come a time" --

15 I'm sorry. Not Bonnie. It's Karen. I'm sorry.

16 "Did there come a time when you were talking to Bonnie and
17 Bonnie told you that perhaps he didn't make eye contact because
18 she thought he had Aspergers; do you recall that?

19 "A. We had that conversation when we were trying to figure out
20 how to handle the situation.

21 "Q. Right. And it never occurred to you back then in October
22 of 2015 that that might be the reason for the no eye contact,
23 correct?

24 "A. It was the first time --

25 "Q. Just yes or no.

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1 "A. No, it had not occurred to me.

2 "Q. And you never, ever asked anybody anything about the
3 failure to make eye contact, correct?

4 "A. Correct."

5 THE COURT: Okay.

6 MR. ZAS: I think that's the excerpt. I don't think
7 it answers the jury's question, which is, is it confirmed or
8 not. So, I suppose our proposal is either to direct them to
9 this portion of the testimony or just say there's no evidence
10 in the record as to whether it's confirmed.

11 THE COURT: Why not do the both?

12 MR. ZAS: We would not object to that.

13 THE COURT: Government?

14 MR. KAMARAJU: That's fine for us, your Honor.

15 THE COURT: Okay. That takes care of five.

16 What about one, two, three, four, six and seven.

17 MR. KAMARAJU: Your Honor, I think we're still digging
18 up whether there was anything with respect to the other ones.
19 I think two -- sorry. I think one, the only thing we could
20 really do is direct them to the language of the indictment.
21 The language of the indictment charges that he disclosed
22 information during that time period in whatever form.

23 THE COURT: I think they are asking what format was
24 the information in.

25 MR. KAMARAJU: We --

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1 THE COURT: Articles, search warrant, tweets.

2 MR. KAMARAJU: We've obviously identified for the
3 Court and the defense what those are. We could read the parts
4 of the transcript that relate, for example, to the search
5 warrant and the tweets, which is where the government alleges
6 the classified information was contained in.

7 THE COURT: Mr. Zas?

8 MR. ZAS: Your Honor, I think the best way to proceed
9 here is to read them -- we have no objection to reading them
10 the charge, charge three, or to refer them back to your Honor's
11 instructions on Count Three.

12 But I think the risk of starting to select certain
13 portions of the evidence risks being under-inclusive, and also
14 perhaps being inaccurate.

15 MS. SHROFF: The issue of him being called to fix the
16 system is at 1783.

17 MR. KAMARAJU: We don't object to 1783 and 1784 going
18 back.

19 MS. SHROFF: Then it's in Weber.

20 MR. KAMARAJU: Where?

21 MS. SHROFF: I'm looking, hold on.

22 Do you have the pages for the last piece? It's 2485
23 and 2619-2620.

24 MR. ZAS: Your Honor, our reading of the record as far
25 as question four goes, is that there is nothing specifically

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1 stating whether the piece refers to a drug or something else.
2 So I think unless the government finds something else, it just
3 might be appropriate for to you say it's up to you, the jury,
4 to determine what Government Exhibit 809 means in light of that
5 document and all the other evidence. Something like that.

6 MS. SHROFF: Your Honor --

7 THE COURT: Mr. Zas, could you repeat that, please.
8 It is up to you, the jury, to what?

9 MR. ZAS: To determine the meaning of Government
10 Exhibit 809 based on that document and all the other evidence.

11
12 THE COURT: Is that all right with the government?

13 MR. KAMARAJU: I think that's fine, your Honor.

14 MS. SHROFF: The testimony pages should go in, your
15 Honor. Pages 2484 is where I ask Mr. Kamaraju to actually read
16 into evidence the fact that that language is actually on 809.
17 And then on 2619-2620 is where the testimony is about the last
18 piece.

19 MR. KAMARAJU: It seems like we should either give
20 them that testimony or you should give them the instruction
21 that you were about to give them.

22 THE COURT: I prefer to give them the testimony.

23 MR. KAMARAJU: That's fine with the government, your
24 Honor.

25 THE COURT: Ms. Shroff?

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1 MS. SHROFF: That's fine. As long as it's --

2 THE COURT: Give me the pages. 2484 and 2619?

3 MS. SHROFF: No. 2484 to 2485, 2619 to 2620.

4 THE COURT: What's the first one, 2484 to 2485?

5 MS. SHROFF: Yes, your Honor.

6 THE COURT: Okay.

7 MR. ZAS: Just for clarification, did you decide to do
8 the transcript in lieu of any -- the first part we talked about
9 or are you going to do both?

10 THE COURT: I prefer to give them the transcripts.

11 MR. ZAS: That's fine.

12 THE COURT: All right. On number one, my notes
13 reflect we're going to tell them to reread the charge in Count
14 Three.

15 What are we doing on Count Two? There's some pages of
16 transcript you wanted me to read or want them to read?

17 MS. SHROFF: I gave the government the range.

18 MR. KAMARAJU: I believe it was 1783 to 1784.

19 MS. SHROFF: 1785.

20 MR. KAMARAJU: The government doesn't object to it.

21 MS. SHROFF: I think, let me just look if you want.
22 We can just print that out and take a look if you need.

23 THE COURT: 1783 to 1785 takes care of Mr. Schulte's
24 work on -- Mr. Schulte is not here.

25 MS. SHROFF: I'm sure Mr. Gonzalez will have him come

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1 up before the jury is brought out.

2 THE COURT: Is he in the building?

3 MS. SHROFF: Yes, he's in the building, your Honor.

4 THE COURT: Mr. Laroche and Mr. Kamaraju, what is the
5 response to number three? You said there is an exhibit that
6 lists all this?

7 MR. LAROCHE: There is a stipulation, your Honor, that
8 lists out what was recovered and entered into evidence from his
9 home computer. It is 3003.

10 THE COURT: Okay.

11 MS. SHROFF: Your Honor, to the extent there's
12 testimony about his home computer that goes in, I think Special
13 Agent Schlessinger was also asked questions about the RAID file
14 in his home.

15 THE COURT: Do you have a page reference?

16 MS. SHROFF: I'm looking, your Honor.

17 THE COURT: Are we just going with the stipulation of
18 GX 3003 or do we have testimony in response to inquiry number
19 three?

20 Number five I'm going to say there is no evidence of
21 record that Mr. Schulte has been diagnosed with Aspergers
22 Syndrome. And then I have pages to refer to?

23 MR. KAMARAJU: That's fine.

24 THE COURT: From Karen's testimony? Can you give me
25 that, Ms. Shroff.

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1 MS. SHROFF: I thought that was 1783 to 1785.

2 MR. LAROCHE: I think it's 1777-78 is for the
3 Aspergers portion.

4 THE COURT: 1777-1778?

5 MR. LAROCHE: Yes.

6 THE COURT: What happened to 1783 through 1785?

7 MR. LAROCHE: That is for number two.

8 THE COURT: Okay. All right. Six and seven?

9 MR. LAROCHE: We're identifying the testimony now,
10 your Honor.

11 THE COURT: Thank you.

12 (Defendant present)

13 MR. LAROCHE: Your Honor, just a point on number six.

14 THE COURT: Yes.

15 MR. LAROCHE: Ms. Shroff.

16 MS. SHROFF: Yes.

17 MR. LAROCHE: Sorry, just an alternative potential
18 reading of point six is that the jury is asking whether Count
19 Four is just about taking the Altabackups or if it also is
20 inclusive of conduct related to Brutal Kangaroo. So conduct
21 that happened in May 2016, or the OSB libraries conduct that
22 happened in April 2016.

23 MS. SHROFF: Then you have to reread them Count Four.

24 MR. LAROCHE: I think that is a potential reading of
25 that question. It's hard to know what they mean by "inclusive

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1 of." They specifically identify Count Four.

2 MR. ZAS: Maybe question four it might be better to
3 ask them to be more specific.

4 MR. LAROCHE: That's fine. For question six.

5 MR. ZAS: Question six, Count Four.

6 MR. LAROCHE: Yes.

7 (Pause)

8 MR. ZAS: We may have a solution on the home computer
9 question. The jury seems to be interested when they ask can
10 you please reread what was found. It sounds like maybe all
11 they want, which is the list, is contained in Government
12 Exhibit 3003. I think the parties would propose that the Court
13 just tell the jury that Government Exhibit 3003 contains a list
14 of what was found on Mr. Schulte's home computers.

15 THE COURT: I wonder about the utility of these
16 conferences because that's what my notes say. I took the notes
17 10 minutes ago saying why don't we just refer to 3003.

18 MR. ZAS: Sometimes it takes us longer to appreciate.

19 THE COURT: Brilliant minds running on similar
20 channels.

21 MR. ZAS: I appreciate your wisdom. It might be
22 appropriate to say there is also testimony related to that, and
23 if you're interested in that, please let us know. So they
24 don't feel like they are being ignored.

25 THE COURT: Shunted aside. Fine.

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1 MR. LAROCHE: Your Honor, I think we have a proposal
2 on seven, the last one. We've identified testimony from
3 Mr. Leedom from pages 974 to 980, and this is in response to
4 "Where were OSB libraries housed/where did they live." He
5 testifies about Stash, which is where they lived, and audit
6 logs from Stash. I think that portion of the testimony is
7 responsive because it identifies that is the location where
8 they are.

9 THE COURT: We'll just refer to Mr. Leedom's testimony
10 at 974 through 980?

11 MR. LAROCHE: Yes, your Honor.

12 THE COURT: Going to review the seven answers now.

13 MR. LAROCHE: Yes, your Honor.

14 THE COURT: The responses to question one. I'm going
15 to tell the jurors that the best advice we can tell them is to
16 reread the Court's instruction on Count Three.

17 On question two, whether Mr. Schulte was called to fix
18 the problems, we refer them to pages 1783 and 1785.

19 As to question three, about the home computer, I refer
20 them to GX 3003, and if you want more information, please let
21 us know.

22 On four, about taking my last piece, it is up to you,
23 the jury, to determine the meaning of this exhibit, based on
24 that document and all the other evidence. It is up to you to
25 determine the meaning of 809, based on that document and all

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1 the other evidence.

2 I have reference here to pages 2984-2985, and
3 2619-2620, do you want those page references in or out?

4 MR. KAMARAJU: I guess your preference had been to
5 send those pages back instead of giving the instruction. But
6 we're happy to give both.

7 THE COURT: I guess I prefer the pages.

8 MR. LAROCHE: That's fine.

9 MS. SHROFF: Could you just reread the page numbers
10 you just cited?

11 THE COURT: Yes. 2484-2485 and 2619-2620.

12 Number five. There is no evidence of record that
13 Mr. Schulte has been diagnosed with Aspergers Syndrome. In
14 reference to pages 1771 through 1778.

15 MR. LAROCHE: I think it's 1777, your Honor.

16 THE COURT: 1777 through 1778.

17 MR. LAROCHE: Thank you.

18 THE COURT: And number six, we're going to ask them to
19 be more specific.

20 And on number seven, we're going to cite pages 974 and
21 980.

22 MR. LAROCHE: Yes, your Honor.

23 THE COURT: Any further comments from Mr. Schulte?

24 MR. ZAS: May we have one second, your Honor.

25 THE COURT: Sure.

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1 MS. SHROFF: Are we going to give them the pages?

2 THE COURT: I thought we'd give them the pages.

3 MS. SHROFF: That's fine.

4 THE COURT: We all set?

5 MR. KAMARAJU: From the government's perspective, yes.

6 MR. ZAS: We're just checking to see whether anyone

7 else other than Mr. Leedom testified about where the OSB

8 libraries were housed.

9 Did Mr. Leonis or Mr. Weber ever talk about that?

10 MR. KAMARAJU: I don't believe so.

11 MS. SHROFF: I think 1778 comes in as part of the
12 Aspergers answer. You have that, right?

13 THE COURT: 1777-1778.

14 It's been an hour now since the jury asked these
15 questions.

16 MS. SHROFF: But that testimony that the government is
17 directing us to is removing OSB libraries access. It does not
18 answer where was OSB libraries was housed or where did they
19 live.

20 MR. LAROCHE: It talked about where they got audit
21 logs. They got audit logs from Stash because it is a Stash
22 project. That is responsive to the question, your Honor.

23 MS. SHROFF: I don't think so. That's not what the
24 question asked, so we don't agree. That's all.

25 THE COURT: You can always ask to be more specific

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1 with regard to question seven.

2 MS. SHROFF: Or you can just answer on Stash if you
3 want. But I don't think you can give them this testimony.
4 This testimony is about a totally different topic.

5 MR. LAROCHE: If Ms. Shroff would prefer just saying
6 it lives on Stash, that's fine with us. That's what we are
7 trying to answer.

8 MS. SHROFF: That's fine.

9 MR. LAROCHE: It is a Stash project.

10 MS. SHROFF: Lives on Stash is fine.

11 THE COURT: What do we say in response to seven? Are
12 we giving page references?

13 MS. SHROFF: They live on Stash.

14 MR. ZAS: I think what we are saying is the parties
15 agree it was housed on Stash or lived on Stash. Rather than
16 giving them testimony that doesn't really respond to anything,
17 to just essentially just make this an agreed-upon answer.

18 MR. KAMARAJU: Okay.

19 MR. LAROCHE: That's fine.

20 THE COURT: The parties agree with that, Mr. Zas, that
21 OSB libraries lives on Stash.

22 MR. ZAS: Or was housed on Stash, either way.

23 THE COURT: Call the jurors in.

24 (Jury present. Time noted 2:12 p.m.)

25 THE COURT: We have answers to your questions.

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Deliberations

1 Question number one: What is included in Count Three?
2 We aren't sure what the purview is -- articles, search warrant,
3 tweets?

4 The best I can do in response to question number one
5 is to instruct you to read my instructions to you on Count
6 Three of the indictment in my jury charge to you.

7 Question number two: In 2015, when DevLAN went down,
8 was Mr. Schulte called to fix problems? How did he fix it?

9 I refer you to pages 1783 through 1785, and we'll send
10 those into the jury room for your consideration.

11 Three: Can you please reread what was found on
12 Schulte's home computers?

13 What was found on Mr. Schulte's home computers is in
14 stipulation GX 3003. If you want more information, please let
15 us know.

16 Question number four: Did GX 809 reference
17 Mr. Schulte's taking a drug ("took my last piece")? If so,
18 what was it? Was it regular use?

19 We refer you to pages 2484 to 2485, and 2619-2620.

20 Five: Is it confirmed that Mr. Schulte has been
21 diagnosed with Aspergers Syndrome?

22 The answer is there is no record evidence received in
23 evidence that Mr. Schulte has been diagnosed with Aspergers
24 Syndrome. I refer you to pages 1777 through 1778.

25 With regard to question six: For Count Four, is

K333SCH2

Deliberations

1 Altabackups inclusive of Brutal Kangaroo? Is it inclusive of
2 OSB libraries? We ask you there to be more specific with your
3 question, we don't understand it.

4 Question number seven: Where were OSB libraries
5 housed/where did they live?

6 The parties agree that the answer to this, where the
7 OSB libraries was housed, was it was housed in Stash.

8 You can continue your deliberations.

9 (Jury continues deliberations. Time noted 2:15 p.m.)

10 THE COURT: For the record, these exhibits were marked
11 8 and 8A. Court Exhibit 8 reflects questions 1 through 5, and
12 Court Exhibit 8A reflects questions 6 and 7.

13 The record will also reflect that Mr. Schulte was
14 present when the jury was in the room when I was reading the
15 instructions to the jury. Thank you very much.

16 MS. SHROFF: Thank you, your Honor.

17 (Recess pending verdict)

18 (At 3:03 p.m. a note was received from the jury)

19 THE COURT: More notes from the jury. We're giving
20 out copies now.

21 Court Exhibit 9: "Can we please have simplified badge
22 times/formats for Schulte on 4/20/16 in a format similar to GX
23 115."

24 Note 10, Court Exhibit 10: "in Exhibit GX 107, what
25 does lock/unlock computer mean in columns Source and Type? Is

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Deliberations

1 the computer locking itself? What is someone unlocking?"

2 Mr. Gonzalez will show you the originals.

3 What do we want to say in response to the first note,
4 Court Exhibit 9?

5 MR. LAROCHE: Your Honor, we could pull out of that
6 exhibit the April 20 entries. There's not much more to do
7 other than that, I think, at this point. It is an entry, it is
8 all his badge records for 2016, and we can pull out the
9 April 20 entries for them from that exhibit.

10 THE COURT: Mr. Zas?

11 MR. ZAS: No objection, your Honor.

12 THE COURT: Okay.

13 MR. LAROCHE: On the second exhibit, I don't think
14 there is anything in the record to point them to. So I think
15 potentially, your Honor, it would be similar to the instruction
16 you were considering with the prison notebook, which is it is
17 up to you to determine based on the evidence before you and the
18 evidence in the record.

19 MS. SHROFF: Wait. What is GX 107?

20 MR. LAROCHE: It includes badge records with the
21 computer unlock and locking.

22 MS. SHROFF: Whose badge records?

23 MR. LAROCHE: Mr. Schulte's.

24 MS. SHROFF: Can you just look at Government Exhibit
25 105. I think 115 is -- if you look at 105, 105 is that exhibit

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Deliberations

1 in a format similar to 115. So you don't have to pull anything
2 out. Can you just take a look at 105.

3 MR. KAMARAJU: Ms. Hurst is pulling it up for
4 everybody.

5 MS. SHROFF: You can take a look now at 115. So 115
6 is Michael's badge records, I think. And 105 -- can we go back
7 to 105. That's 107. And that's 105. So why don't you just
8 send them 105. That's badge record in that format, which is
9 what they asked for.

10 MR. LAROCHE: I think they are asking for simplified
11 badge records for 4/20 because 105, the numbers aren't in
12 chronological order in all cases. So it's generally in
13 chronological, but if you go down to 4/20, there are some
14 entries that are not in that order based on how it was sorted.

15 MS. SHROFF: This is the exhibit that they put in. It
16 is the exhibit that is in the same format similar to Government
17 Exhibit 115. It's exactly what they are asking for.

18 MR. LAROCHE: Not exactly what they are asking for,
19 your Honor.

20 MS. SHROFF: "Can we please have simplified badge
21 time/formats for Schulte on 4/20/16 in a format similar to GX
22 115."

23 MR. LAROCHE: And --

24 MS. SHROFF: That's similar -- I just want to finish.
25 So if you could just put the two things side by side, the two

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Deliberations

1 documents. 115.

2 THE COURT: Which is 115?

3 MS. SHROFF: 115 is on the left. And then Schulte is
4 on the right. That's the same exact format.

5 MR. LAROCHE: It is not the same exact format, your
6 Honor. Again, 115, which is on the left, is in chronological
7 order by times. 105 is generally in chronological order, but
8 some times are out of order. So it seems like what they are
9 asking for is a format where it is in chronological order, for
10 the defendant, on April 20. Our proposal would be to provide
11 that to them to be helpful.

12 MS. SHROFF: It's right there. Page 13 of 27. 4/20.
13 Badge column, badge column. Date time column, date time
14 column. Person, person. Action, action. Where, where.
15 Spindle, spindle. Access granted, access denied.

16 MR. LAROCHE: Again, your Honor --

17 THE COURT: I suppose we could give them the entry for
18 Schulte on 4/20/16.

19 MS. SHROFF: Exactly.

20 THE COURT: Without anything else.

21 MR. LAROCHE: That's fine, your Honor. That was our
22 proposal.

23 MS. SHROFF: No.

24 THE COURT: Do you want to give me 415?

25 MS. SHROFF: You are going to give them page 13 and

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Deliberations

1 page 14 of 27?

2 MR. LAROCHE: Your Honor, our proposal would be to
3 pull out from 13 and 14 the entries for 4/20, because there are
4 entries for other days on those pages.

5 MS. SHROFF: They can read them as 4/20 or any other
6 dates.

7 THE COURT: They asked about 4/20 though.

8 MS. SHROFF: I'm giving them 4/20. I'm asking the
9 Court just to give them -- could you just blow it up so the
10 judge can see that 4/20 is on page 13. This is not the right
11 page. Right.

12 So, this is the page that has 4/20. And there it is.
13 You can't reorganize evidence. That's the format. You can't
14 just make a summary chart and give it to them because you want
15 to make a summary chart.

16 THE COURT: What I'm suggesting is you give them this
17 chart with the 4/20 date on it, and that's the only chart you
18 give them.

19 MS. SHROFF: That's page 13. I agree. You just print
20 out page 13 of 27 and give it to them.

21 MR. LAROCHE: Your Honor, they have this already.

22 MS. SHROFF: No, they have it as a 27 --

23 MR. LAROCHE: Ms. Shroff.

24 MS. SHROFF: Go ahead.

25 MR. LAROCHE: They're asking for April 20, your Honor.

K333SCH2

Deliberations

1 Our proposal is to provide them the entries for April 20.

2 MS. SHROFF: No.

3 MR. LAROCHE: Again.

4 MS. SHROFF: I thought you were done.

5 THE COURT: Ms. Shroff, you can't interrupt.

6 MR. LAROCHE: Our proposal was to provide them the
7 entries just for April 20 on these pages. They already have
8 this in evidence. They are asking for something similar.
9 That's our proposal.

10 MS. SHROFF: No.

11 MR. LAROCHE: 13 and 14.

12 MS. SHROFF: I wish you would finish.

13 MR. LAROCHE: 13 and 14, that's our proposal, your
14 Honor.

15 MS. SHROFF: You can give them page 13 of this
16 document, and on page 14 if there is anything about April 20,
17 give it to the jury. But we are not going to agree to the
18 government making a different document and extracting data from
19 that. That's not proper.

20 THE COURT: They are not make a different document,
21 are they?

22 MS. SHROFF: They are suggesting they highlight for
23 them what is April 20. You can read what is April 20. Right
24 now they may not be able to read it because they are looking at
25 it as a full 27-page document and in a different format. We

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Deliberations

1 don't know what exhibit they are looking at.

2 So this is in the format of 115, it answers the
3 question, and the government shouldn't be making a third
4 exhibit or highlighting this in any way. That's not what the
5 note asked for. Read the note. "In a format similar to GX
6 115."

7 THE COURT: All right.

8 MS. SHROFF: This is --

9 THE COURT: I'm going to adopt the government's
10 suggestion. Tell me again what it is, Mr. Laroche.

11 MR. LAROCHE: On pages 13 and 14, we would provide
12 them just the entries for April 20.

13 MS. SHROFF: They are not even looking at this exhibit
14 yet. They are looking at 107. Right? They haven't -- you
15 don't know what exhibit the jury is looking at. So this is the
16 document that's responsive to April 20. What's the problem
17 with printing this page and giving it to them?

18 THE COURT: You have your objection. What about --

19 MS. SHROFF: I'm sorry, your Honor. Can you tell me
20 how it's going to go into the jury?

21 THE COURT: How is it going to go into the jury,
22 Mr. Laroche?

23 MR. LAROCHE: We'll provide them pages 13 and 14 with
24 just the entry for April 20.

25 MS. SHROFF: That's not proper. They are redacting

K333SCH2

Deliberations

1 information.

2 THE COURT: All right. You have your objection.

3 What about Exhibit 10? Court Exhibit 10? Locking and
4 unlocking computer.

5 MR. LAROCHE: We propose that you just simply tell
6 them that they have to rely on the exhibit. There is nothing
7 else in the record related to that question. They can draw
8 whatever inference they want.

9 MS. SHROFF: Your Honor, could you just go back,
10 please, to pages 13 and 14 for a minute.

11 THE COURT: They are on my screen.

12 MS. SHROFF: Could you take a look at 14. How are
13 they planning to give this? On 14 there's dates that go 4/21,
14 4/20, 4/21, 4/20. Are they going to redact those lines?
15 That's not proper.

16 MR. LAROCHE: Yes, your Honor. Yes, we would redact
17 them, and we can tell them that they also have the complete
18 exhibit. But they have asked for April 20.

19 THE COURT: All right. Call in the jury.

20 (Jury present. Time noted 3:33 p.m.)

21 THE COURT: I have your notes. The first note is:
22 "Can we please have simplified badge times/formats for Schulte
23 on 4/20/16 in a format similar to GX 115."

24 We're going to provide that information to you which
25 shows the dates and times for Mr. Schulte on 4/20/16.

K333SCH3

Deliberations

1 With regard to the second note: "In Exhibit GX 107,
2 what does lock/unlock computer mean in columns Source and Type?
3 Is the computer locking itself? What is someone unlocking?"

4 I am afraid the record that we have does not answer
5 these questions. So you'll have to rely on the document itself
6 and all the other evidence in the record. Thank you. You can
7 resume your deliberations.

8 (Jury resumes deliberations. Time noted 3:35 p.m.)

9 THE COURT: Thank you.

10 (Recess pending verdict)

11 (At 3:37 p.m. a note was received from the jury)

12 THE COURT: We have another note from the jury. The
13 note was contained in an envelope which is marked "For
14 Tomorrow." The jury intends to go home at 4 o'clock. But,
15 this is available for your inspection. I'll just read this
16 note into the record.

17 "(1) Is there evidence that April 18 and 20 were the
18 only two times in 2016 that Schulte left the vault last? (2)
19 What does mount the Altabackups mean? (3) What does create
20 data store mean? (4) When someone logs out of a virtual
21 machine, what happens to the log files from that session?"

22 I'd suggest the parties get together and see if they
23 can't format an answer to these questions.

24 MR. LAROCHE: Yes, your Honor.

25 THE COURT: And the answer to the questions may vary

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Deliberations

1 well be you can't answer the questions, and they have to rely
2 on the record as it exists, the trial record as it exists now.

3 So I'd suggest we get together at 9 o'clock tomorrow
4 morning, and if we have answers we'll call the jury in. If we
5 don't have answers, we'll formulate the answers and then call
6 the jury in.

7 Anything else to take up tonight?

8 MR. LAROCHE: No, your Honor. Thank you.

9 THE COURT: Thank you very much.

10 MS. SHROFF: Your Honor. We don't need anything.

11 THE COURT: Okay.

12 MS. SHROFF: Thank you.

13 (Adjourned until March 4, 2020, at 9 a.m.)
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